

REMARKS/ARGUMENTS

This Amendment and Response is responsive to the non-final Office action dated December 14, 2009, setting forth a shortened three month statutory period for reply with two-month extension of time expiring on May 14, 2010. This response is submitted on May 14, 2010; thus, a two-month extension of time petition and fee accompany this Amendment and Response.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action.

Prior to entry of this Amendment and Response, claims 6-12, 73 and 77-140 are pending, with claims 6, 7, 9 and 73 being independent. In this Amendment and Response, claims 9, 73, 81, 120, 133, 134, 139 and 140 are amended, claims 141 and 142 are added, claims 6, 83-88, 100-108, and 135-137 are cancelled, and claims 109-134 and 138-140 are withdrawn. Accordingly, after entry of this Amendment and Response, claims 7-12, 73, 77-82, 89-99, 109-134, and 138-142 are pending with claims 7, 9 and 73 being independent claims.

I. Election/Restrictions

The Assignee respectfully disagrees with the Examiner's assertion that claims 100-140 are directed to different embodiments of the invention. The added claims merely describe additional aspects of the embodiment shown in Figs. 1-17. However, to move this application forward, claims 100-108 and 135-137 are cancelled, and claims 109-134 and 138-140 are withdrawn from consideration on the merits. The Assignee respectfully reserves the right under the provisions of C.F.R. § 1.141(a) to have these claims reinstated should a claim that they depend from be allowed.

II. Claim Objections

The Examiner objects to claims 9-12 and 94-99. Specifically, claim 9 is asserted to be unclear because of how the language is structured. To clarify the claim, the Examiner suggests that the phrase "means, attached to said frame, for providing a constant load to a user, said means utilizing resilient bands" should be changed to "means for providing a constant load to a user, said means attached to said frame and utilizing resilient bands." Claim 9 is amended as suggested by the Examiner. Accordingly, the Assignee respectfully submits that the objections

to claims 9-12 and 94-99 are overcome and respectfully requests that these claims be indicated as allowable.

III. Rejection under 35 U.S.C. § 103(a)

Claims 6, 73, 78-82, and 84-99 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Taiwan Patent Publication No. 379572Y (the '572 Patent). Claims 77 and 83 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the '572 Patent in view of U.S. Patent No. 5,145,479 to Olschansky et al. (hereinafter "Olschansky"). For at least the following reasons, the Assignee respectfully disagrees with these rejections.

Claim 73 is amended to recite that the frame includes a member selectively rotatable relative to the frame, the member supports the resistance engine, and "the load adjustment mechanism configured to selectively rotate the member relative to the frame to adjust a magnitude of the substantially constant load provided by the resistance engine." Support for these amendments may be found at least in Figs. 1 and 13-15 and on page 17, lines 1-18.

The '572 Patent does not teach or suggest a combination of elements as recited in claim 73. More particularly, in the previous office action, the Examiner asserted that the coupling device 61 is the resistance engine. While the Assignee does not necessarily agree with the Examiner, the Assignee observes that such a construction by the Examiner means that the coupling rod 41 is then the equivalent of the recited "member" since the figures of the '572 Patent show the coupling rod 41 as supporting the coupling device 61 (i.e., the alleged resistance engine). However, to change the magnitude of the load that opposes movement of the holding handles 49, the weight block 37 must be slid along its carrying bar 32. Because changing the magnitude of the load is done by sliding the weight block 37 along its carrying bar 32, the '572 Patent does not teach rotating the member that supports the resistance engine to adjust the magnitude of the substantially constant load provided by the resistance engine. Thus, for at least the foregoing reasons, the '572 Patent fails to teach or suggest every element of claim 73. Accordingly, the Assignee respectfully submits that claim 73 is patentable over the '572 Patent and respectfully requests that the Examiner indicate it as allowable.

Claims 78-82 depend from independent claim 73. As these claims depend from a patentably distinct independent claim, these claims are also allowable. Accordingly, the Assignee respectfully requests that the Examiner withdraw the rejections of these claims and indicate them as allowable.

Claim 77 depends from claim 73. As discussed above, claim 73 is patentable over the '572 Patent. Further, Olschansky does not appear to remedy the deficiencies identified above

with respect to the '572 Patent. Accordingly, the Assignee respectfully submits that claim 77 is patentable over the combination of the '572 Patent and Olschansky, and thus respectfully requests that the Examiner indicate it as allowable.

Claims 89-93 depend from independent claim 7. Since the Examiner indicated in the Conclusion section that claims 7 and 89-93 were allowable, the Assignee believes that the § 103(a) rejections of these claims was not intended. Claims 94-99 depend from independent claim 9. As a § 103(a) rejection was not raised for independent claim 9, the Assignee also believes that the § 103(a) rejections for these claims was not intended.

Claims 6 and 83-88 are cancelled, thus rendering their rejections moot.

IV. Reinstatement of Claims

Claims 109-134 and 138-140 each depend from one of independent claims 7, 9 and 73. As such, the claims contain all elements of their independent claims, and thus are patentable over the cited references. Accordingly, the Assignee respectfully requests that these claims be reinstated and indicated as allowable, under the provisions of 37 C.F.R. § 1.141(a).

V. New Claims

Claim 141 adds the element of a cable, which was previously recited in claim 73. Claim 142 adds the element of a handle, which was also previously recited in claim 73. Further, each claim depends from claim 73. As the Examiner has already examined a claim that contains these elements and these claims depend from an allowable independent claim, the Assignee respectfully requests that the Examiner enter them and indicate them as allowable.

VI. Conclusion

After entry of the above listing of claims and remarks, claims 7-12, 73, 77-82, 89-99, and 109-134 and 138-142 will be pending in the application, with claims 109-134 and 138-140 withdrawn from consideration. In accordance with the amendments and arguments set forth herein, the Assignee respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance. The Assignee also respectfully requests reinstatement and allowance of claims 109-135 and 138-140.

This Amendment and Response is submitted with a two-month extension of time. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Appl. No. 09/802,835
Reply to Office Action of December 14, 2009

Should any issues remain that the Examiner believes may be dealt with in a telephone conference, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

Date: May 14, 2010

By RDH
Robert D. Hoge, 55,273
DORSEY & WHITNEY LLP
370 Seventeenth Street, Suite 4700
Denver, Colorado 80202-5647
Tel.: (303) 629-3400
Fax: (303) 629-3450

USPTO Customer No.: 80705